

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

APR 28 2004

In re: CITY OF CINCINNATI; THOMAS A.
STREICHER, JR., Police Chief

LEONARD GREEN, Clerk

Petitioners (04-0303)

1:01cv769

ESTATE OF ROGER D. OWENSBY, JR., by and
through Roger D. Owensby,

Plaintiff-Appellee (04-3441),

v.

ORDERCITY OF CINCINNATI; THOMAS STREICHER,
JR., Police Chief,

Defendants-Appellants (04-3441)

ROBERT B. JORG, et al.

Defendants.

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Before: KENNEDY, MARTIN, and ROGERS, Circuit Judges.

The City of Cincinnati and Police Chief Thomas Streicher, defendants in this action brought by the estate of a man who died in police custody, wish to appeal the district court's order that denied a motion for summary judgment on the grounds of governmental immunity under a state statute. They have filed both a direct appeal (Case No. 04-3441) and a petition for permission to appeal under 28 U.S.C. § 1292(b) (Case No. 04-0303). The defendants also move for a stay of the trial. The plaintiff opposes the petition to appeal and the motion to stay trial.

When a district court is of the opinion that an otherwise nonappealable order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation," it may so certify in an order. 28 U.S.C. § 1292(b). The party seeking review may then file in this court, within ten days, a petition for permission to appeal. Although the defendants have filed a petition to appeal, the district court has not issued the necessary certification. In the absence of a certification by this district court, this court will not grant interlocutory review under § 1292(b). *Wiltse v. Clarkson*, 542 F.2d 363 (6th Cir. 1976) (order); *Benton Harbor Malleable Indus. v. Int'l Union, UAW*, 355 F.2d 70, 72 (6th Cir. 1966) (per curiam). Therefore, the petition for permission to appeal must be denied.

We also find no basis for the exercise of jurisdiction in No. 04-3441. See *Sinick v. County of Summit*, 76 Fed. Appx. 675, 2003 WL 22220529 (6th Cir. Sept. 24, 2003); *Walton v. City of Southfield*, 995 F.2d 1331, 1343 (6th Cir. 1993); *Marrical v. Detroit News, Inc.*, 805 F.2d 169, 172 (6th Cir. 1986).

Therefore, the petition for permission to appeal, Case No. 04-0303, hereby is **DENIED**. Case No. 04-3441 is **DISMISSED sua sponte** for lack of a final appealable order. The defendants' motion for a stay is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT


Clerk